

ORDERED in the Southern District of Florida on _____.



Steven H. Friedman, Judge
United States Bankruptcy Court

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE:

Case No. 05-36319-BKC-SHF
Chapter 7 Proceeding

JOHN ANGELO,

Debtor (s) /

**ORDER DETERMINING EQUITY IN DEBTOR'S
HOMESTEAD TO BE NOT IN EXCESS OF HOMESTEAD**

THIS CAUSE came on to heard on March 14, 2006 at an evidentiary hearing scheduled pursuant to this Court's January 30, 2006 Order Sustaining Trustee's Objection to the Debtor's Claim of Exempt Property, to determine the amount of the equity in the real property, consistent with *In re Wayrynen* , 332 B. R. 479 (Bankr. S.D. Fla. 2005) and in *In re Kaplan*, 331 B. R. 483 (Bankr. S. D. Fla. 2005). The Court, having considered the argument of counsel and being otherwise fully advised in the premises,

ORDERS that the amount of equity in the debtor's homestead located at 6372 La Costa Drive, Apartment No. 105, Boca Raton, Florida, is **zero**.

The Court determines that Patricia Dzikowski, chapter 7 trustee, has failed to satisfy her burden of proof with regard to establishing the amount of equity in the debtor's residence in excess of **(1)** the mortgage encumbering the property, and **(2)** the \$125,000.00 homestead exemption

provided under 11 U.S.C. § 522 (p)(1). *In re Shurley*, 163 B.R. 286 (Bankr. W. D. Tex. 1993); *In re Allen*, 254 B.R. 497 (Bankr. M. D. Fla. 2000). Pursuant to Bankruptcy Rule 4003(c), the trustee or the party objecting to the claim of exemption must prove, by a preponderance of the evidence, that the debtor is not entitled to the claimed exemption. The trustee failed to prove that equity exists in excess of \$125,000.00. Although the trustee elicited testimony from the debtor as to his estimate of the present value of the property, the debtor is not an expert witness, nor has he been qualified as such in the area of real estate. The trustee's evidence as to the value of the property is deficient and this Court will not speculate as to the value of the property. Accordingly, the Court finds that there is no equity in the property, and that the property is exempt in its entirety.

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Copy to:

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**Attorney Schrier is directed to mail a conformed
copy of this Order to all interested parties and to file a
Certificate of Service with the Clerk of the Bankruptcy Court**